

§ 3143 – DETENTION OF A DEFENDANT PENDING SENTENCE

§ 3143(a)(1): unless § 3143(a)(2) applies, the Court shall detain the defendant unless it finds by clear and convincing evidence that the defendant is not a flight risk or a danger to the community.

§ 3143(a)(2): the Court shall order detention of a person who is convicted of a crime described in § 3142(f)(1)(A) unless:
(A)(i) the Court finds there is a substantial likelihood that a motion for acquittal or new trial will be granted; or (ii) the government has recommended that no sentence of imprisonment be imposed; and
(B) the Court finds by clear and convincing evidence that the defendant is not a flight risk or a danger to the community.

Is § 875(c) a crime described in § 3142(f)(1)(A)?

§ 3142(f)(1)(A): a crime of violence, a violation of section 1591, or an offense listed in section 2332b(g)(5)(B) *for which a maximum term of imprisonment of 10 years or more is prescribed*.

Is the qualifier “*for which a maximum term of imprisonment of 10 years or more is prescribed*” applicable to only the crimes listed in § 2332b(g)(5)(B) or does it modify all three antecedents?

Modifies all three antecedents (series qualifier)

Modifies last antecedent only (last antecedent rule)

Cases applying the qualifier to all 3 antecedents:
United States v. Paulino, 2020 WL 1847914, at * 3 (S.D.N.Y. April 13, 2020); *United States v. Persico*, 2017 WL 3669554, at *3 (E.D.N.Y. Aug. 23, 2017); *United States v. Baldazo*, 2012 WL 12947283, at *1 (N.D. Ind. Apr. 19, 2012); *United States v. Madoff*, 586 F. Supp. 2d 240, 247 (S.D.N.Y. 2009); *United States v. Chavez-Rivas*, 536 F. Supp. 2d 962, 965-66 (E.D. Wis. 2008).

Federal misdemeanors and petit “crimes of violence” carry no prison terms or up to 1 year
Did § 3142(f)(1)(A) mean to include those crimes where imprisonment as a penalty is not a foregone conclusion?

Ambiguity when a crime listed in § 2332b(g)(5)(B) constitutes both a crime of violence and carries a sentence of less than 10 years
E.g., 18 U.S.C. § 1363; 18 U.S.C. § 2280(a)(2)

Because the qualifier modifies “crime of violence,” and § 875(c) carries a 5 year prison term, Mr. Morelli isn’t guilty of a crime under § 3142(f)(1)(A).

Accordingly, § 3143(a)(2) does not apply.
Section 3143(a)(1) applies, and the Court considers whether there is clear and convincing evidence that Mr. Morelli is not a flight risk or a danger to the community.

§ 3145(c): a person subject to detention pursuant to § 3143(a)(2), and who meets the conditions of release set forth in section 3143(a)(1) or (b)(1), may be ordered released, under appropriate conditions, by the Court, if it is clearly shown that there are exceptional reasons why the Mr. Morelli’s detention would not be appropriate.